



November 21, 2006

Dear Community Leader:

Knowing of your interest in San Joaquin Valley water issues, I wanted to take this opportunity to discuss the proposed water releases in the San Joaquin River Settlement and solicit your feedback.

Let me begin by providing you a quick background on the issue. The restoration of salmon to the San Joaquin River has been the subject of litigation for nearly two decades. In fact, the legal dispute has been in settlement talks off and on for more than five years. In September, Natural Resources Defense Council (NRDC), Friant Water Users Authority and the United States Departments of Interior and Commerce came to an agreement to settle the lawsuit out of court. This settlement proposes to end an 18-year lawsuit over the operation of Friant Dam and proposes to resolve longstanding legal claims brought by a coalition of environmental groups. In its basic terms, the Settlement would mandate water releases from Friant Dam with the goal of restoring Spring-run Chinook salmon to the San Joaquin River downstream of Friant Dam. The Settlement further called for Congressional legislative action to codify the terms of the Settlement. Consequently, the settling parties and third party downstream water users traveled to Washington D.C. for final negotiations on a legislative proposal.

As I monitored final negotiations between the settling parties, I was pleased to see that some of the third parties were given an opportunity to plead their case. However, numerous community leaders, such as you, with an interest in the restoration effort were not present. In my opinion, the absence of these "other" third parties has left various issues unresolved.

With this said, you may have heard that the agreement between the settling parties is a "done deal." However, this is not the case. In fact, the Settlement included a provision that requires Congress to enact, and the President to sign, implementation legislation in order for restoration to proceed. Furthermore, you may have heard that I am trying to scuttle the agreement and force this issue back into the courts. This is also not the case. I would like nothing more then to see this issue settled out of court. However, I simply believe that we need to have an agreement that ensures the impacts of water releases are addressed and that no farmer, city, or community is hurt.

Therefore, before Congress considers the legislative proposal, I wanted to provide you with a summary of the Settlement (attached), an analysis of what I believe are the unresolved issues, and a summary of my thoughts on how to mitigate the impacts (attached). After reviewing the information, I would appreciate your feedback.

Your comments are vital to the process of developing a plan which ensures the restoration of the San Joaquin River and the economic future of the San Joaquin Valley.

Best regards,

Devin Nunes
Member of Congress





Analysis of the Unresolved Issues and Possible Mitigation

Water Releases

Water Releases																																		
The Settlement			Possible Mitigation																															
<p>The water releases in the Settlement are based on an NRDC scientist’s hydrological graphs. In simple terms, these hydro graphs can be broken down into six water years: Critical-Low, Critical-Dry, Dry, Normal-Dry, Normal-Wet, and Wet. Below are the acre-foot releases required every year with interim flows starting in 2009 and full flows in 2014. Sixty percent of the time Friant operates in a Dry and Normal-Dry year. Furthermore, based on current water law, Class 2 water contracts will be the first to see water reductions.</p> <p><i>Note:</i> The Settlement also authorizes “Buffer Flows” of an additional 10% and “flushing flows” in Wet water years.</p>			<p>To date, decisions have not been made on who will lose how much water. Furthermore, the releases listed below are not final. In 2026, all parties have the right to request additional or reduction in flows (obviously reductions in environmental restoration flows are extremely rare). <u>While the Settlement purports to limit water losses, that certainty will only last 20 years in the best of circumstances.</u> The Settlement does not prevent another group from filing another lawsuit asserting the same claim being settled. Therefore, there needs to be clear direction from Congress that this will be the end of the line for water releases. Furthermore, Congress needs to be provided an analysis of who will have to relinquish water and how the districts will mitigate for the losses.</p>																															
<table><tr><th>Releases</th><th>Critical-Low</th><th>Critical-Dry</th><th>Dry</th><th>Normal-Dry</th><th>Normal-Wet</th><th>Wet</th></tr><tr><td>Restoration Releases</td><td>0</td><td>71,000</td><td>184,000</td><td>248,000</td><td>356,000</td><td>556,000</td></tr><tr><td>Riparian Releases</td><td>117,000</td><td>117,000</td><td>117,000</td><td>117,000</td><td>117,000</td><td>117,000</td></tr><tr><td>Total</td><td>117,000</td><td>188,000</td><td>301,000</td><td>365,000</td><td>473,000</td><td>673,000</td></tr></table>							Releases	Critical-Low	Critical-Dry	Dry	Normal-Dry	Normal-Wet	Wet	Restoration Releases	0	71,000	184,000	248,000	356,000	556,000	Riparian Releases	117,000	117,000	117,000	117,000	117,000	117,000	Total	117,000	188,000	301,000	365,000	473,000	673,000
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Economic Impacts of Water Releases

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The Settlement				Possible Mitigation			
The Settlement does not address the economic impacts of water releases.				Two studies released by the University of California (1996) and the Northwest Economic Associates (1997) were focused on the economic impacts of water supply reductions and reached similar conclusions (summary below). Congress must work with the independent experts at Congressional Research Service to develop a comprehensive report on various aspects of the Settlement and its impacts.			
NEA Study on Supply Reductions (1997)				UC Study on Supply Reductions (1996)			
200,000 acre feet		500,000 acre feet		200,000 acre feet		500,000 a.f.	
Fallowed Land	172,855 acres	Fallowed Land	371,000 acres	Job Losses	17,925	Job Losses	19,430
Job Losses	10,420	Job Losses	17,130	Income Loss	\$687 mil/year	Income Loss	\$733 mil/year
Income Loss	\$363 mil/year	Income Loss	\$584 mil/year				



Water Recapture and Replacement

The Settlement	Possible Mitigation
<p>The Settlement calls on the Secretary of the Interior to develop and implement a plan for recirculation, recapture, reuse, exchange or transfer of restoration flows. The Settlement also sets up a Recovered Water Account in which water losses by users will be replaced on a one-for-one basis for \$10 an acre-foot. However, the recovered water will only be available in wet years when it is not needed for restoration of the river.</p>	<p>While the Settlement is extremely detailed on the restoration plan, it is vague on the water recapture plan. This is extremely troubling considering the development of a recirculation plan is critical. In 1992, implementation legislation for the Central Valley Project Improvement Act included language (3406(b)(3)) that called on the Secretary to develop a plan to utilize numerous techniques to recover the 800,000 acre-feet of water dedicated to the environment in Section 3406(b)(2). Unfortunately, to date, a plan has not been implemented and the 800,000 acre-feet has not been replaced. History shows that without clear direction from Congress, these types of plans are not implemented. Therefore, before interim restoration flows begin, Congress must mandate that the Secretary develop and implement a least-cost plan to fully recover or replace all water and provide such recovered or replacement flows to those that relinquished the restoration flows. Furthermore, assuming pumping from the Delta will be the primary avenue for water recirculation, Congress must address the issues of increased pumping, pending litigation to shut down Delta pumps, and Friant's priority level to receive recovered water from Delta pumps. Moreover, under existing circumstances, in most years there is not capacity to pump additional water from the Delta and there will be few opportunities to recirculate or recapture water released from Friant.</p>

Groundwater Impacts and Pumping Costs

The Settlement	Possible Mitigation
<p>The Settlement does not address the impacts of water releases on groundwater and pumping costs.</p>	<p>Groundwater, which has traditionally served as a buffer to the effects of reduced surface water supplies during droughts, would be under extreme pressure with the proposed restoration flows. A 1997 Northwest Economic Associates study shows that groundwater levels would nearly double in depth and pumping costs would significantly increase. While the Settlement calls for the development of "a recirculation plan" and the creation of a "Recovered Water Account" (as reviewed above), Congress must develop real and concrete steps to address groundwater overdraft and increased pumping costs. Therefore, before interim restoration flows begin, Congress must mandate that the Secretary, in cooperation with representatives of affected landowners, develop and implement a least-cost plan to fully mitigate the impact on groundwater resources within the service area of the Friant Division caused by the release of restoration flows. Mitigation might include, but should not be limited to, development of new water supplies, land retirement, groundwater banking projects, and the recovery of restoration flows.</p>



Cost of the Settlement

The Settlement	Possible Mitigation
The settling parties have estimated that restoration of salmon to the river will cost any where from \$250 - \$800 million. The California Department of Water Resources has estimated that the range of \$350 - \$570 million is more appropriate. The Exchange Contractors placed the restoration number at \$1.071 billion. While the Exchange Contractors have taken the extra step of escalating their numbers based on inflation, all these numbers are simply educated guesses. Actual costs are not known.	The educated guesses by the settling parties have failed to address the wider implications of restoration releases – economic impacts. Therefore, using the lowest income loss numbers from the 1997 Northwest Economic Associates study, the following of land, the cost of river channel improvements, and adjusting them all for inflation; <u>the “real” cost of the Settlement will conservatively reach \$10 billion or more (see below).</u> Therefore, first Congress must work with the independent experts at Congressional Research Service to develop a comprehensive report on various aspects of the Settlement and its impacts. Second, Congress must ensure that there is a firm and finite funding supply to ensure that the restoration and water replacement efforts are completed in the shortest amount of time. These funds should be derived from State Bonds, CVP Capital Repayments, and CVPIA Restoration Fund Payments.

The “REAL” Cost of the Settlement

Formula: {[Lost Income x 20 Years] + River Improvements + Fallowed Land (170,000 acres x \$5,000)} x {Inflation} = “Real” Cost

{[\$7.26 billion] + \$1 billion + \$850 million} x {20%} = **\$10.95 billion**

Calculated based on \$10,000 per acre = **\$11.99 billion**

Calculated based on \$15,000 per acre = **\$12.97 billion**

Assumptions: Lost income was based on the 1997 NEA study; Lost income would end at year 20 assuming water releases ended; River improvements include the use of Reach 4b; Fallowed land based on the lowest number in the 1997 NEA study; Cost per acre is based on a range of assessed crop land value in Fresno County; Inflation was calculated in simple terms (not compounded) over an 8 year period because river improvements should be completed by 2014; Inflation calculation does not include inflation of lost income from year 8 to year 20; Inflation calculation does not include inflation of fallowed land from year 8 to year 20 when most of the land would be fallowed. In simple terms, this is a conservative calculation.

Third Party Impacts

The Settlement	Possible Mitigation
The Settlement provides third parties the opportunity to express concerns and provide input during the normal environmental review process or through Memorandums of Understanding with the Secretary – after the Settlement has been implemented. Downstream water users had an opportunity to negotiate directly with the settling parties in Washington, D.C. this past September. Furthermore, the settling parties have stated that they do not believe or intend that restoration will have material adverse impacts on any third parties.	While downstream water users have been consulted, many third party impacts have not been addressed. Cities, counties, and community leaders, who may not be Friant contractors, need to be consulted immediately and any impacts to these third parties need to be mitigated. Furthermore, Congress must mandate that no Central Valley Project water other than San Joaquin River water impounded by Friant Dam shall be utilized to implement restoration. Moreover, Congress must ensure that no costs associated with the implementation of the Settlement shall be imposed directly or indirectly on any Central Valley Project contractor, or any other person or entity, outside the Friant Division unless such costs are incurred on a voluntary basis.



Future Litigation

The Settlement	Possible Mitigation
<p>The Settlement dispenses with the <i>Natural Resources Defense Council, et. al. v. Rodgers, et. al.</i> case. The Settlement also provides procedures for the settling parties to resolve disputes. Resolution will start with meetings, and then move on to neutral third party mediation, and finally, if needed, they can turn to the U.S. District Court. <u>The Settlement does not prevent individuals or organizations, not party to the Settlement, from exercising their rights under existing law.</u> Therefore, anyone outside of the settling parties can file legal action for further increases to restoration flows beyond the terms of the Settlement. Moreover, the Settlement only prevents parties to the Settlement from filing new court action -- <u>until 2026</u>.</p>	<p>There needs to be clear direction from Congress that this will be the end of the line for water releases. Folks in the San Joaquin Valley should not face another demand for more water after the Settlement expires in 2026. Therefore, Congress must declare that the implementation of this settlement satisfies obligations under the Central Valley Project Improvement Act which required the Secretary to develop a plan to restore the San Joaquin River. Congress must also declare that the implementation of this settlement satisfies obligations under Section 5937 of the California Fish and Game Code which requires the maintenance of a live fishery downstream of a dam. Finally, Congress must provide a legal course of action for Central Valley Project long-term water service contractor or landowner within the Friant Division who are adversely affected by the Secretary's failure to implement plans to recover restoration flows and mitigate for groundwater impacts.</p>

Eminent Domain

The Settlement	Possible Mitigation
<p>The proposed legislation that accompanied the Settlement included a provision that authorized the Secretary to purchase property from willing sellers. It also authorized the Secretary to use his/her authority provided in the 1937 authorization of the construction of the Central Valley Project (50 Stat. 844, chapter 832, section 2). Within this statute the following language is found: "...may acquire by proceedings in eminent domain, or otherwise, all lands, rights-of-way, water rights, and other property necessary..."</p>	<p>Private property rights must be protected. Therefore, Congress must provide clear direction to the Secretary that he or she shall <u>not use Eminent Domain to acquire private property – including water rights.</u></p>

Delta Water Quality

The Settlement	Possible Mitigation
<p>The Settlement does not address Delta water quality.</p>	<p>One of the main goals of restoring the San Joaquin River has always been to improve water quality in the Delta. While the Settlement significantly increases flows into the Delta, a majority of the flows will come at times of the year when they will only have marginal water quality benefits. It is not known if current water quality standards adopted by the State Water Resources Control Board will be met with restoration flows in the Settlement. If improving Delta water quality is a goal of restoring the river, then the Settlement should reflect this goal. Therefore, Congress must work with the independent experts at Congressional Research Service to develop a comprehensive report on various aspects of the Settlement and its impacts.</p>



Salmon Restoration

The Settlement	Possible Mitigation
<p>The Settlement identifies that success will be based on the return of Spring-run Chinook salmon to the upper reaches of the San Joaquin River and maintaining the fish in “good condition.” Furthermore, Section 20(d)(1) of the Settlement identifies that success is based on if “... 7 years after the reintroduction of spring run chinook salmon to the San Joaquin River, whether the annual escapement of wild spring run adult salmon has dropped below 500 in any year ...”</p>	<p>Unfortunately, the Settlement does not define the meaning of “good condition.” Furthermore, based on the Settlement, if only 500 fish return to the river then the restoration effort is considered successful. In this situation, because a feasibility study has not been accomplished, it is incumbent upon Congress to look at worst case scenarios. Based on complete restoration costs provided by settling parties, the cost per fish should be understood:</p> <p style="text-align: center;">\$250 million = \$500,000 per fish \$800 million = \$1.6 million per fish</p> <p style="text-align: center;"><i>Cost of Restoration in “REAL” Terms</i> \$10.95 billion = \$21.9 million per fish.</p> <p>Congress must undertake a serious debate to determine if these expenses are in the best interest of all taxpayers – not just those that are party to the Settlement. Furthermore, Congress must work with the independent experts at Congressional Research Service to develop a comprehensive report on various aspects of the Settlement and its impacts.</p>

Legal Fees

The Settlement	Possible Mitigation
<p>The Settlement authorizes <i>Natural Resources Defense Council, et. al</i> to recoup, from the taxpayers, their attorneys’ fees, expenses, and costs incurred subsequent to April 10, 2000.</p>	<p>Unfortunately, there is no similar provision in the Settlement for the farmers in the Friant Division or third parties whom have spent millions on legal fees. Congress must provide fairness considering this is a settlement – not a court order. The reasonable attorneys’ fees for both the plaintiffs and the Friant farmers should be paid from the Judgment Fund as determined by the court hearing the litigation.</p>

Legislative Process

The Settlement	Possible Mitigation
<p>The Settlement requires Congress to pass legislation in substantially the same form as proposed by settling parties. This must occur by December 31, 2006 or any party to the Settlement has the right to void the agreement.</p>	<p>The complexity of the Settlement agreement, as well as federal funding implications, requires the diligence of Congress to discover the facts and determine the Settlement’s far reaching impacts. The House Subcommittee on Water and Power has held an oversight hearing on the Settlement. However, due to time constraints, a number of questions were not addressed. Therefore, Congress must continue with the normal legislative process with respect to the Settlement agreement, including additional hearings.</p>



Future Cost of Water

The Settlement	Possible Mitigation
<p>The Settlement does not address the impacts of water releases on future water costs.</p>	<p>The release of water from Friant Dam, no matter how much, will have an impact on the economics of water pricing. Friant water prices are based on a number of factors including, but not limited to, capital repayment, operation and maintenance costs, and environmental restoration payments. Considering that operation and maintenance of a fully restored river will cost more than current expenses, Congress needs to ask the question: Will these additional costs be figured into the Bureau of Reclamation's pricing mechanisms for Friant water? Furthermore, considering that these water reductions will force water districts to come up with creative ways to replace the lost water – for example water transfers – will the pursuit of water outside of the Friant Division increase water prices statewide? Moreover, the Settlement creates a Recovered Water Account in which water can be purchased for \$10 an acre-foot. However, <u>wheeling that water through the Delta pumps could cost at least \$120 an acre foot if not more.</u> Again, considering that a feasibility study has not been accomplished, these are the types of questions to which Congress needs answers. Therefore, Congress must work with the independent experts at Congressional Research Service to develop a comprehensive report on various aspects of the Settlement and its impacts.</p>

